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WHEN RECORDED MAIL TO:**

City of San Jose
Department of Planning Building and Code
Enforcement
200 East Santa Clara St., Tower 3rd Floor
San Jose, CA 95113
Attn: Joseph Horwedel

Space above this line for Recorder's use

**FUNDING AGREEMENT
BY AND BETWEEN
THE CITY OF SAN JOSE
AND
THE EVERGREEN-EAST HILLS VISION STRATEGY PROPERTY
OWNERS
FOR
CERTAIN IMPROVEMENTS AND AMENITIES
IN THE EVERGREEN DEVELOPMENT POLICY AREA**

December 5, 2006

REVISED 5/11/07 - Property Owners of the Four Opportunity Sites

REVISED 5/9/07 berg

REVISED 5/8/07 CITY OF SAN JOSE

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THIS FUNDING AGREEMENT ("Agreement") is made this ____ day of _____, 2007 ("Effective Date") by and between the **CITY OF SAN JOSE**, a municipal corporation of the State of California ("City"), and all of the following Evergreen-East Hills Vision Strategy area property owners jointly and severally:

ARCADIA DEVELOPMENT CO., a California corporation ("Arcadia");

ELI REINHARD, an individual;

PEPPER-LANE-QUIMBY LLC, a California limited liability company ("PLQ");

DUINO FAMILY PARTNERS LP, a California limited partnership ("Duino");

MISSION WEST PROPERTIES LP, a California limited partnership ("Mission West");

IONE ENTERPRISES 2 LLC, a California limited liability company ("Ione");

PACIFIC RIM SCIENCE PARK LLC, a California limited liability company ("Pacific Rim");

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YERBA BUENA OPCO LLC, a California limited liability company (“Yerba Buena OPCO”); and

SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT, a political subdivision of the State of California (“College District”) (collectively “Property Owners”).

The City and each of the above-listed Property Owners may be referred to in this Agreement individually as “Party,” and collectively as the “Parties.”

RECITALS

A. Property Owners own the largest remaining undeveloped parcels in the Evergreen Development Policy Area, which Area is generally located south of Story Road and east of Highway 101 within the City’s Urban Growth Boundary. The Property Owners’ several parcels within the Evergreen Development Policy Area, which sites are generally depicted and described by their common names on Exhibit “A” attached hereto and incorporated herein by reference. The Property Owners of each of the parcels on each larger development site are indicated more specifically on Exhibit “B” attached hereto and incorporated herein by reference.

B. The Evergreen Development Policy was adopted by the City of San Jose in August 1976 as a comprehensive land use plan for the Evergreen Development Policy Area and governs all development within the Evergreen Development Policy Area. The Evergreen Development Policy has been amended from time to time, most recently in 1995.

C. In 2001 and 2002, the City Council adopted the West Evergreen, East Valley/680, and KONA Strong Neighborhoods Initiative (SNI) Improvement Plans. Based on significant community involvement through the West Evergreen, East Valley/680, and KONA Neighborhood Advisory Committees (NACs), the Plans identify “top ten” action items including proposed investments in new facilities.

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D. On February 2, 2002, Legacy (known as Yerba Buena OPCO for purposes of this Agreement) applied for General Plan text and Land Use/Transportation Diagram amendments to change the land use designation on its site from Campus Industrial to Mixed Use with No Underlying Land Use Designation [Campus Industrial 0-1.7 million square feet, Medium Density Residential (8-16 DU/AC), High Density Residential (25-40 DU/AC), General Commercial (0-100,000 sq. ft.)] on a 119-acre site. These amendment applications were withdrawn in July 2003.

E. On June 28, 2002, Evergreen College applied for a General Plan Land Use/Transportation Diagram amendment to change the land use designation on its site from Public/Quasi-Public to Neighborhood Community/Commercial on a 10-acre site. This amendment application was withdrawn in July 2005.

F. During the Fall of 2002, meetings occurred between Property Owners, the Mayor's Office, the District 8 Council Office, other property owner representatives, and upper management of the Departments of Public Works, Transportation, and Planning, Building and Code Enforcement to explore the possibility of updating the City's Evergreen Development Policy and consider potential changes to the General Plan within Evergreen in a more comprehensive fashion rather than piecemeal amendments to increase the development potential within the Evergreen Development Policy Area.

G. During November 2002, the Evergreen-Eastridge area was the subject of a Charrette organized and implemented by the University of Miami/Knight Program in Community Building. This effort involved the community, including the Property Owners, City staff, local stakeholders, and development experts in a hypothetical design exercise to create a new vision of transit-oriented development and community improvements in and around the Eastridge shopping center at Tully Road and Capital Expressway.

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H. On February 4, 2003, the City Council approved the Mayor's Budget Strategy Memorandum setting forth specific guidance to control General Fund expenditures. With respect to long range land use planning, the direction was to "defer or suspend advance land use planning efforts without outside funding."

I. On February 25, 2003, the City Council approved appropriation actions to accept \$85,000 from Evergreen property owners to conduct the Evergreen Land Use and Transportation Study, consisting of a traffic analysis of 7,900 new housing units and 5,000 jobs in Evergreen. The analysis assumed improvements to Highway 101, 31,000 jobs in Edenvale, and 22,000 jobs in North Coyote Valley, and found that traffic congestion would remain a significant problem during morning and afternoon commute hours in the Evergreen Development Policy Area.

J. In August 2003, the District 8 Councilmember convened neighborhood leaders and Charrette participants to explore their interest in participating in a planning process (called the Evergreen Visioning Project) to update the Evergreen Development Policy and develop a comprehensive land use and transportation plan for the Evergreen Development Policy Area. The plan would identify transportation improvements and community amenities as well as the amount of new development that might be authorized in the Evergreen Development Policy Area. Almost all community members in attendance agreed to participate in this effort, resulting in the Evergreen Visioning Project Task Force. The Property Owners also participated in this process.

K. In November 2003, and subsequently in March 2004 and June 2006, the City Council approved funding agreements with Yerba Buena OPCO to fund the Evergreen Visioning Project (also known as the Evergreen Smart Growth Strategy and later renamed to the Evergreen-East Hills Vision Strategy).

L. In January 2004, the City Council adopted a resolution clarifying and reaffirming the Evergreen Development Policy and directing staff to discourage certain residential development applications until completion of the Evergreen Smart Growth Strategy.

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M. On May 9, 2005, Property Owners or their representative developers filed individual General Plan Land Use/Transportation Diagram amendments and rezoning applications for each of their respective sites.

N. In June 2005, the City Council initiated an update to the Evergreen Development Policy and associated General Plan amendments; appointed a reconfigured Task Force to guide the Evergreen-East Hills Vision Strategy; adopted a work plan; and adopted ten Vision and Outcome statements to guide the completion of the planning effort. The Property Owners have attended and participated in meetings of the Task Force.

O. Property Owners have represented to the City that they are, voluntarily and independently of the City, negotiating with the several school districts in the Evergreen Development Policy Area to address school needs that may not be met by the payment of the statutory school impact mitigation fee, which is the sole mitigation measure that can be required by the City of the Property Owners for school impacts pursuant to Government Code section 65995.

P. In October 2006, the Evergreen-East Hills Vision Strategy Task Force completed its work, did not reach consensus on a single recommendation, and forwarded several recommendations regarding land use, amenities, schools and other development-related issues to the City Council.

Q. In November 2006, the Planning Commission held a public hearing, considered the breadth of the Task Force and staff recommendations, and put forth its own set of recommendations to the City Council.

R. The Property Owners' interest in an update of the Evergreen Development Policy and proposed entitlements includes a voluntary contribution to pay for base transportation improvements and community amenities. Although the Property Owners did not provide a written proposal, it has been generally understood and common knowledge by the City and the community that the Property Owners would offer a monetary contribution Two Hundred Million Dollars 200,000,000.00 to fund a package of

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transportation improvements and community amenities based upon City Council legislative approvals of 5,200 new residential units in the Evergreen Development Policy Area. This offer from the property owners was recently reduced to \$167.3 million based upon 4,230 residential units and reservation of 105 acres of industrially designated land, as reflected in this Agreement. The Parties acknowledge that some of the Transportation Improvements in Article 2, and some Amenities in Article 3 land dedication, affordable housing on the Evergreen Valley College site, and voluntary contributions to the affected school districts that are the subject of this Agreement, , have no direct nexus to the impacts of the proposed development of the Property Owners' various sites. The Property Owners have offered and agreed to contribute funding towards the construction of some of the traffic improvements and community amenities, and to provide related land dedication, for the benefit of the region and the Evergreen Development Policy Area in order to balance the significant environmental and quality of life impacts as defined in the applicable EIR, which cannot be mitigated to a level of insignificance. The proposed improvements and amenities have been refined and prioritized by the City Council appointed Evergreen East Hills Vision Strategy Task Force, which included participation by the Property Owners and community representatives from the Evergreen Development Policy Area. The resulting desired traffic improvements are specified in Section 2 of this Agreement and the amenities are specified in Section 3 and Exhibit "C," attached hereto and incorporated herein by reference (hereinafter, collectively the "Improvements and Amenities," or individually and respectively as the "Improvements" or the "Amenities" as indicated respectively in Section 2, and in Section 3 and Exhibit "C" herein).

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S. The Improvements and Amenities that may be constructed through the Maximum Contribution, as defined hereinbelow, include: (i) Improvements to US Route 101 between the US Route 101/I-280/I-680 Interchange and the US Route 101/Yerba Buena Road Interchange as required improvements; (ii) various Evergreen Development Policy Area traffic improvements required as mitigation measures; and (iii) other amenities to be selected by the City based upon the priorities set by the City Council for construction by the City with a funding contribution by the Property Owners over the course of the development of the owners' properties depicted in Exhibits "A" and "B", in periodic payments as specified in this Agreement Exhibit "D" hereto.

T. City has conducted environmental review of the project pursuant to the California Environmental Quality Act in the form of a Draft Environmental Impact Report ("DEIR"), including such Improvements and Amenities in the Project Description and evaluation, for which a resolution certifying the DEIR as the final Environmental Impact Report was adopted by the City Council on December 12, 2006, and a resolution adopting a Statement of Overriding Considerations was adopted on _____, 2007...

U. The Parties hereby enter into this Agreement to further implement the Evergreen-East Hills Vision Strategy Planning Area, allocate responsibilities and give adequate assurances of performance among the various Parties involved in the development, provide extensive private financing towards the construction of some of the Improvements and Amenities, including but not limited to regional public infrastructure and a portion of otherwise-required traffic mitigation measures, and provide related land dedication, affordable housing, and voluntary school contributions by the Property Owners and their successors in interest.

[moved to end of Section 1.01]**NOW, THEREFORE**, in consideration of the foregoing recitals and the promises contained herein, and subject to the terms, provisions, and conditions of the Recitals and as hereinafter set forth in this Agreement, the Parties agree as follows:

ARTICLE 1 PURPOSE AND INTENT

1.01 Purpose

A. Funding of Improvements and Amenities.

The purpose of the Agreement is to make binding the Property Owners' voluntary contribution towards the funding, in accordance with the Exhibit "D" hereto, the construction of the Improvements and the Amenities, including some of which Improvements are mitigation measures for the Evergreen Area Development Policy Update ("Project"), and to summarize the Property Owners' responsibilities as expressed in the following documents: (a) the Evergreen Development Policy as amended for this project; and (b) the DEIR.

B. Required Local Infrastructure Improvements Not Affected by Agreement.

Local infrastructure improvements are also required to be constructed as development occurs on each Property Owner's parcel or parcels. These improvements include, among other requirements, local circulation improvements to address local circulation needs in conjunction with the City's standard development review and entitlement process. Local infrastructure improvements shall be implemented through further required land use approvals, and by approved improvement plans secured by development specific improvement agreements with each Property Owner where required by law, and are intentionally excluded from this Agreement.

C. City Discretionary Authority Preserved.

The Property Owners hereby acknowledge and expressly agree that City shall exercise its discretionary authority and is under no obligation to approve any development-related application(s) by the Property Owners jointly or individually as a result of this Agreement and the performance of this Agreement.

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Additionally each Property Owner acknowledges and agrees that any breach of this Agreement may result in the City's denial, modification or rescission of any Evergreen Development Policy related approval, including but not limited to General Plan Amendments, affecting the breaching Property Owner's properties, including but not limited to any legislative, quasi-judicial or administrative approvals by the City, among all other remedies available to the City.

1.02 Intent; Amount of Maximum Contribution

It is the intent of this Agreement that each Property Owner shall contribute funding to the City in accordance with Exhibit "D," and City shall rely upon said contributions, in a total contribution amount of One Hundred Sixty Seven Million Three Hundred Thirty-Three Thousand Dollars, (\$167,333,000.00) which amount remaining due to the City shall be increased annually on January 1 of each year commencing January 1, 2008 to reflect the most recent changes in the construction cost index as most recently reported in the Engineering News Record construction index ("Maximum Contribution"), in order to fund the design and construction of the Improvements, Amenities, and some required traffic mitigation measures. The Maximum Contribution does not include the dedication of property from any of the Property Owners, the provision of affordable housing by the College District as specified in Article 4 of this Agreement, the voluntary contribution towards schools herein. The Maximum Contribution to the City shall be made the manner and in the phases indicated in Exhibit "D"

Each Property Owner shall have a maximum obligation to fund only its allocated share of the Maximum Contribution in accordance with Exhibit "D" hereto.

1.03. Use of Maximum Contribution

The City may use the Maximum Contribution only towards the funding of the Improvements, including those that are mitigation measures, and the Amenities. The contribution from the Property Owners shall be used and allocated at the discretion of the City towards the design, further environmental compliance if required, related property acquisition if required, construction, and acceptance by the City of the Improvements and Amenities and for any other purpose authorized by this Agreement, including project management.

The Property Owners agree that although the City's intent is to use the Maximum Contribution towards the Improvements and Amenities with priority towards transportation improvements, because of funding constraints the City has no obligation to complete all of the Improvements and Amenities.

1.04 Governmental Funding of Improvements

In the event that the City obtains funds for any of the Improvements and Amenities from any federal, state or regional grant or other similar government funding source, such funding shall not relieve the Property Owners of the obligation to pay the City the Maximum Contribution which may then be used by the City towards the cost of the construction of the Improvements and Amenities, to defray the City's operations and maintenance costs of the Improvements and Amenities, and/or to provide affordable housing in the Evergreen Development Policy Area.

ARTICLE 2 IMPROVEMENTS DEFINED

"Improvements" includes the following transportation related improvements:

2.01 US Route 101 Corridor from US Route 101/I-280/I-680 Interchange to the US Route 101/Yerba Buena Road Interchange.

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The Maximum Contribution may contribute funding towards the of the following improvements to the US Route 101 Corridor in Santa Clara County from the US Route 101/I-280/I-680 Interchange to the US Route 101/Yerba Buena Road Interchange as identified in the 101 Corridor Study (101 Central) dated February 2004. This study indicates that the 101 Improvements are a necessary measure to improve traffic on the State highway system to meet current needs and anticipated future growth of the San Jose community including the Evergreen-East Hills Vision Strategy Area. The 101 Improvements include, but may not be limited to the following:

- (1) Construction of an additional lane in the southbound direction from south of Story Road to Yerba Buena Road;
- (2) Reconfiguration of the US 101/Tully Road Interchange;
- (3) Reconfiguration of the US 101/Capitol Expressway Interchange;
- (4) Construction of an auxiliary lane in the southbound direction between the Tully Road and Capitol Expressway Interchange;
- (5) Modification of the northbound on-ramp at the US 101/Yerba Buena Road Interchange;
- (6) Replacement of the Tully Road over-crossing over US 101;
- (7) Replacement of two existing sound walls along west side of US 101 near US 101/Tully Road Interchange; and
- (8) All clearances, permits, fees, and land acquisitions associated with the improvements listed herein (collectively referred to as the "101 Improvement Project").

The Valley Transportation Agency ("VTA") shall be the 101 Improvement Project manager-implementing agency from design through completion of construction. It is contemplated that VTA shall complete the 101 Improvement Project on behalf of the State of California Department of Transportation ("State

2.02 White Road

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White Road may be widened and restriped to its full planned six-lane configuration from south of Ocala Avenue to Quimby Road, and from Stevens Lane to Aborn Road. The improvements may include but are not limited to sidewalk, bike lanes, pavement, and a landscaped median constructed to City standards. Additional through and/or turn lanes may be added to the intersections with Ocala Avenue, Tully Road, Norwood Avenue, Quimby Road, Stevens Lane and Aborn Road.

2.03 Reconfiguration of Ocala Avenue between Capitol Expressway and White Road

Ocala Avenue may be widened to four lanes, two in each direction, between Capitol Expressway on the west and White Road on the east, a distance of approximately 0.7 miles. The work is currently expected to occur within the existing right-of-way and the widening shall consist of restriping a short segment of pavement west of White Road.

2.04 Capitol Expressway between Quimby Road and US Route 101

The existing High Occupancy Vehicle (“HOV”) lanes between US Route 101 and Nieman Boulevard may be converted to the customary “mixed flow” lanes, meaning that their use during weekday peak commute periods would no longer be restricted to vehicles with two or more occupants. Other improvements to Capitol Expressway between U.S. 101 and Quimby Road may consist of the addition of sidewalks, landscaping of the median, the addition of street lights, the planting of trees, pavement work, and traffic signal upgrade/modification. All work is currently expected to occur within the existing right-of-way. The timing of these improvements would coincide with the LRT project and/or the relinquishment of Capitol Expressway from County jurisdiction to City jurisdiction.

2.05 Various Intersection Improvements

Additional through and/or turn lanes and operational at the following 14 intersections in order to provide additional capacity and reduce delay:

- (1) White Road - Ocala Avenue - Marten Avenue;

- (2) White Road - Tully Road;
- (3) White Road - Norwood Avenue;
- (4) White Road - Quimby Road;
- (5) White Road - Stevens Lane;
- (6) White Road - Aborn Road - San Felipe Road;
- (7) Yerba Buena Road - San Felipe Road;
- (8) Yerba Buena Road - Silver Creek Road;
- (9) King Road - Tully Road;
- (10) Aborn Road - Ruby Avenue;
- (11) Capitol Expressway - Quimby Road;
- (12) Capitol Expressway - Aborn Road;
- (13) Capitol Expressway - Silver Creek Road; and
- (14) Capitol Expressway - McLaughlin Avenue.

2.06 New Traffic Signals

(1) Installation of traffic signals at the following locations; however, the following list of intersections is preliminary and may be modified by the City based upon actual traffic patterns:

- (a) Ruby Avenue - Norwood Avenue;
- (b) I-680 Ramps (northbound) - Jackson Avenue;
- (c) Ruby Avenue - Tully Road;
- (d) Story Road - Clayton Road;
- (e) Marten Avenue - Flint Avenue - Mt. Rushmore Drive;
- (f) Quimby Road - Scottsdale Drive;
- (g) Nieman Boulevard - Daniel Maloney Drive;
- (h) Story Road - Lancelot Lane;
- (i) Ocala Avenue - Hillmont Avenue; and
- (j) Ocala Avenue - Adrian Way.

2.07 Other Traffic Mitigation Measures

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- (a) Intersection of Capitol Expressway and Quimby Road (for DEIR Scenarios II-VI): Addition of a northbound right-turn lane and an eastbound right-turn lane;
- (b) Tully Road and McLaughlin Avenue (for DEIR Scenarios II-VI): Addition of an exclusive northbound right-turn lane; and
- (c) Neiman Boulevard and Yerba Buena Road (for DEIR Scenario VI, partial mitigation: Addition of a second westbound left-turn lane (collectively referred to as the Traffic Mitigation Measures).

2.08 Transportation Amenities

Selected improvements in this category may include a proposed Intelligent Transportation System (ITS Network, construction of sections of Thompson Creek Trail, new bike lanes, transit system enhancements and traffic calming measures, and are listed with the Amenities in Section 3 herein and in Exhibit "C" hereto.

[moved this section earlier in document]

ARTICLE 3 AMENITIES DEFINED

"Amenities" includes the list of Amenities described in Exhibit "C" hereto:

3.01

Amenities Priorities and Tiers

The Parties acknowledge and agree that not all of the Amenities listed in Exhibit "C" are intended to be constructed, but that the City shall in its sole discretion select which of the Amenities may be constructed if sufficient funds are available for construction.

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While very general cost estimates have been prepared for most of the Amenities, projected construction costs will be refined once design work is completed and shall ultimately be determined at time of construction. Some Amenities are located on specific Opportunity Sites, so their full implementation may be difficult or impractical ahead of the development of the site. Accordingly, specific land dedication minimum thresholds are included in this Agreement as specified below.

The Amenities listed in Exhibit "C" have been placed into three groups, which are identified as Tier 1 through Tier 3 on Exhibit "C" hereto. Tier 1 amenities are considered the most important to the community and their funding and construction will be given the highest priority. Tier 2 and Tier 3 follow in sequential order of importance. Full funding of Tier 1 amenities is a priority, per the Phasing Plan, for development of the later phases. While the amenities within each Tier are also ranked, the order of their implementation may vary from that ranking based upon the availability of funding and other factors. Moreover, dependent on the amount of available funding, an amenity in any tier may be reprioritized and constructed in advance of other amenities in order to utilize all available funding. Descriptions of these Amenities are included as Exhibit "C" hereto.

B. Tier 1 Amenities Where Joint Use Agreements Are Proposed

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In the event that a joint use agreement between the City and a school district serving the Evergreen Development Policy Area is proposed by the affected Property Owner and the affected school district for any Tier 1 Amenity as indicated on Exhibit "C," the City shall consider a proposed agreement in good faith and may, in its sole discretion, determine whether to enter into such a joint use agreement. In the event that the City, the affected school district, and the affected Property Owner enter into a joint use agreement for any Tier 1 Amenity, the affected Property Owner may make a direct contribution to the school district in the amount required by the joint use agreement and such payment shall be credited by the City to the affected Property Owner against the affected Property Owner's next phased payment pursuant to Exhibit "D". Notwithstanding the foregoing, the dedication of the property for the provision of the Tier 1 Amenity described in Exhibit "C" as "2. Community/Youth Center on Arcadia Site (30,000-40,000 sq. ft.)," shall be in accordance with the timing requirements in Section 4.03 regardless of whether there is sufficient funding to construct the Amenity or the Amenity is constructed pursuant to a joint use agreement.

3.02 Relationship to Parkland Dedication Ordinance/Parkland Impact Ordinance

Parkland associated with the development of the Property Owners' development sites shall comply with minimum City Parkland Dedication Ordinance ("PDO") and Parkland Impact Ordinance ("PIO") obligations expressed in those ordinances and the Evergreen Development Policy as amended. The funding and completion of parks and recreation facilities listed as Improvements and Amenities in this Agreement, as well as the required dedication or acquisition and dedication of unimproved land therefor, shall fully comply with the requirements of the Evergreen Development Policy as amended, in addition to the required compliance with the City's PDO and PIO by each of the Property Owners. The property owners may enter into a parkland agreement that would require the satisfaction of their respective parkland obligations cumulatively rather than on a project-by-project basis. Entering into said cumulative parkland agreement shall be required at the time of the second phase in Exhibit "D".

3.03 Turn-Key Agreements

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A Property Owner may propose to the City to construct any Amenity, so long as the construction by the Property Owner as the “City-private developer contract” exception to the public bidding requirement in Title 14 of the San Jose Municipal Code and all of the conditions of approval of such a contract are made by the City. The Property Owner’s proposal shall include, among other items that may be requested by the City, the improvement plans and the engineer’s estimate of the cost of construction of the amenity. In the event that the City authorizes construction of the Amenity pursuant to this section and the requirements of the Municipal Code, the Property Owner shall in no event be compensated more than ten percent 10% above the City-approved engineer’s estimate for the work, including all change orders. Upon completion of the construction of the Amenity, the amount of funding remaining to be contributed to the City by the affected Property Owner shall be reduced by the amount approved in advance for the work in the City-private developer contract for the construction of the Amenity.

[moved to Article 1]

ARTICLE 4 LAND DEDICATION; AFFORDABLE HOUSING

4.01 Fire Station Site

At the time of development of the parcel commonly referred to as the Pleasant Hills Golf Course site, Assessor Parcel Nos. 649-23-001 and 649-24-013, but no later than concurrently with approval by the City and recordation of the Final Map for the development, the Property Owner shall dedicate to the City for the relocation by the City of Fire Station 21 a net one (1) acre site fronting White Road and another existing public street or street that shall be dedicated upon improvement by the Property Owner to the City for public use. Such site shall have all public utilities, including but not limited to gas, electricity, water, sewer, and stormwater facilities, located within the public right-of-way immediately adjacent to the site for the purpose of serving the fire station. The Property Owner shall timely submit the proposed location of the one-acre parcel to the

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City for prior City approval of the proposed location and suitability of the parcel for fire station purposes, which shall not be unreasonably withheld by the City.

4.02 AFFORDABLE HOUSING: EVERGREEN VALLEY COLLEGE SITE

Forty percent (40%) of the housing units approved by the City for the Evergreen Valley College Site, which includes Assessor Parcel Nos. 660-21-022 and 660-21-023, shall be deed restricted affordable housing units. It is the intention of the College District to develop rental units on the site. Eight percent (8%) of the total rental units shall be restricted to occupancy by very low income households as defined in Health and Safety Code section 50105, with the remaining balance of affordable units (32%) set aside for low and/or moderate-income households as defined in Health and Safety Code section 50093. The affordable units on the site shall be made available at affordable rents as defined in Health and Safety Code section 50093, and shall be deed-restricted for fifty-five (55) years. The affordable housing units may be grouped or clustered in such way as to allow separate developers to build the affordable units and the market rate units. The agreement of the College District to provide affordable housing units as set forth in this Section shall be governed by the terms of a subsequent agreement to be entered into with the City which is required to be executed by the City and the College District prior to any entitlement to construct the market rate residential units.. The College Site may develop one-half of the approved market rate housing units on the site prior to development of any affordable units. Thereafter, affordable housing units equal to 40% of the then constructed market rate units, shall be developed on the site prior to the commencement of construction of any further market rate units

4.03 Community/Youth Center and Gym on Arcadia Site

No later than the date of the first development permit (Planned Development Permit, Tentative Map or other equivalent permit for development purposes) for development of the parcel commonly referred to as the Arcadia Site, which includes Assessor Parcel Nos. 670-20-071, 670-24-013, 670-24-045, 670-25-027, 670-29-002,

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670-29-017, and 670-29-020, in accordance with the Evergreen Development Policy as amended, regardless of whether development of the parcel occurs as contemplated in the amended Evergreen Development Policy or whether there is sufficient funding available for construction, the Property Owner shall dedicate to the City for community/youth center purposes a site of 4.7 net acres in size to accommodate a 30,000 to 40,000 sq. ft. community center with adequate open space, parking and ingress and egress to an adequate public street.. Such site shall have all public utilities, including but not limited to gas, electricity, water, sewer, and stormwater facilities, located within the public right-of-way immediately adjacent to the site for the purpose of serving the community center. The Property Owner shall timely submit the proposed location of the parcel to the City for prior City approval of the proposed location and suitability of the parcel for community/youth center purposes, which shall not be unreasonably withheld by the City.

4.04 Dedication of Land for Amenities Where Joint Use Agreements Are Proposed

For any Amenity that is proposed to be located in part upon property owned by any of the school districts serving the Evergreen Development Policy Area, the affected Property Owner shall dedicate its portion of the site to the City no later than the date of the first development permit (Planned Development Permit, Tentative Map, or other equivalent development permit) for that Opportunity Site unless, prior to any rezoning of any of the Property Owners' sites, the City voluntarily enters into a joint use agreement for the Amenity and the property on which the Amenity is located with the affected school district, which may at the City's option include the conveyance of an interest in such property to the School District for joint use purposes with the City. The City shall consider a proposed joint use agreement in good faith and may, in its sole discretion, determine whether to enter into such a joint use agreement

4.05 Amenities on Opportunity Sites

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When an Amenity is located on an Opportunity Site, any required land dedication shall occur at the time of the specific entitlement process for that Opportunity Site or as may otherwise be required by Article 4 herein.

4.06 School Sites and Related Joint Use Sites

The following are the School Sites and the related Joint Use Site to be provided by Property Owner's:

A. Pleasant Hills:

1. Construction and payment for new K 6/8 school on 6 acre site.
2. New 5 acre joint use park adjoining school
3. New 9+ acre sports park

B. Mission West/Berg:

1. Agreement to sell Evergreen Elementary School 12 acres of land for \$18,750,000 on or before 5/30/09 for a new school.
2. Agreement to provide 5 acre joint use park adjoining school site if improvements are funded from amenity funds.

C. Arcadia:

1. Dedication of 4.7 acres that will be added to Meadow Fair Park for School/community center.

In addition to the above, all residential units will pay the following extra fees above SB60 statutory fees to the East Side Union High School District and the Evergreen Elementary School District:

East Side Union High School - \$1.75 per sq. ft. per unit

Evergreen Elementary School - \$.75 per sq. ft. per unit

ARTICLE 5 TERM OF AGREEMENT

5.01 Expiration

The term of this Agreement shall commence upon the Effective Date and shall continue until the completion of all payments, land dedication, and Improvements and Amenities required by this Agreement, and the completion of all development upon the Property Owners' sites identified in Exhibit "A" and Exhibit "B" in accordance with all applicable development approvals by the City. Following the expiration of the term of this Agreement, this Agreement shall be deemed of no further force and effect, except as to those provisions expressly designated herein to survive expiration or termination.

5.02 Agreement Voidable by Property Owners

Because this Agreement does not and cannot bind the City Council in its legislative discretion any group of two (2) of the following three (3) primary Property Owners: Yerba Buena OPCO, **DUINO FAMILY PARTNERS LP**, and Mission West, may void this Agreement in the event that the City Council approves or directs staff to return for consideration of an Evergreen Development Policy amendment and General Plan Land Use/Transportation Diagram and Text amendments that provide for any of the following: (i) less than Four Thousand Two Hundred Thirty (4,230) residential units allocated to each of the Property Owner as shown on Exhibit "B" attached hereto, (ii) contribution of more than the Maximum Contribution or (iii) reservation of more than 105 acres for industrial purposes.. No individual signatory is authorized to void this Agreement pursuant to this section. If any of the Property Owners listed in this section desire to void this Agreement, a minimum of two (2) of the three (3) Property Owners must duly execute a notice of termination pursuant to this section and deliver it to the City in the manner provided herein no later than thirty (30) calendar days following the earlier of the Council's approval or direction to staff to return for consideration of adoption of the amendment to the Evergreen Development Policy that does not reflect the Property Owners' requirements listed in Subsections (i) through (iii) above.

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This section does not apply to any other future amendments modifying the Evergreen Development Policy in whole or in part, so long as said amendments are substantially consistent with the terms of this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.01 City Project Manager Funding

The City anticipates that the Administration of this Agreement and the other agreements contemplated herein, the corresponding Evergreen Development Policy, and all related land use entitlements, shall require staff work not covered under current City development related fees, nor are they considered in the cost of providing the Improvements and Amenities hereunder. In order to compensate the City for such costs, at any time during the term of this Agreement, and so long as there are funds remaining unencumbered, the City Council may determine to use a portion of the funds provided by the Property Owners pursuant to this Agreement in an amount not to exceed One Hundred Twenty Thousand Dollars (\$120,000.00) per fiscal year.

6.02 Successors of Property Owners

_____ This Agreement is binding on the successors and assigns of each of the Property Owners. Each Property Owner shall notify the City in writing within 15 calendar days of the transfer of its Opportunity Site or any portion thereof of the name of the transferee, form of entity of the transferee, and the name and address of the transferee's agent for purposes of notice under this Agreement.

6.03 Remedies

- A.** Each Party shall notify the other of any item considered by such Party to be a material breach of this Agreement to allow the allegedly breaching Party an opportunity to cure.
- B.** If such material breach is not corrected or corrective action commenced within fifteen (15) business days for a monetary breach and thirty (30) business days for a non-monetary breach after receipt of a notice to cure sent by the non-breaching Party, or within an extended period if authorized in writing by the Party giving notice of the breach, and diligently pursued to completion, the non-breaching Party may, at its option cure any breach and seek appropriate remedies in a court of law. In addition to any other rights or remedies, a Party may institute proceedings for mandamus, specific performance or other injunctive or declaratory relief to enforce this Agreement. This Agreement does not preclude any Party from seeking any legal or equitable remedies that accrued on or before the Effective Date that are not the subject of this Agreement.

6.05 Hold Harmless Agreement

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A. Each Property Owner agrees to and shall hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the Property Owner, or and of their contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by Property Owner or by any of Property Owner's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Property Owner or any of Property Owner's contractors or subcontractors; but only where operation(s) giving rise to the damage or claims for damage (i) occur on property then owned by Property Owner or (ii) directly relate to a Property Owner's obligation under this Agreement. This Section 6.05.A shall not apply to suits and actions brought by the Property Owners or any of them for default of this Agreement or to suits and actions brought by any person or entity arising from the sole active negligence or willful misconduct of City or its elected and appointed representatives, officers, agents and employees.

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B. Property Owners and each of them shall require in any agreement to assign or transfer all or any portion of their rights, duties, obligations or interests in this Agreement in connection with an assignment or transfer of all or any portion of the Subject Property that any such assignee or transferee ("Transferees", each a "Transferee"), agree to hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from a Transferee's or its contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by the Transferee or by any of its contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for the Transferee or any of the Transferee's contractors or subcontractors; but only where operation(s) giving rise to the damage or claims for damage (i) occur on property then owned by the Transferee or (ii) directly relate to an obligation of this Agreement assumed by the Transferee. This Section 5.02.B shall not apply to suits and actions brought by a Transferee for default of this Agreement or to suits and actions brought by any person or entity arising from the sole active negligence or willful misconduct of City or its elected and appointed representatives, officers, agents and employees.

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C. In the event of any legal action instituted by a third party challenging any provision of the Evergreen Development Policy amendment, this Agreement, the procedures leading to its adoption, including but not limited to compliance with the California Environmental Quality Act, or its implementation, including without limitation, the approval of any legislative or quasi-judicial actions or the issuance of any discretionary development-related approvals pursuant to the Evergreen Development Policy as amended, the Property Owners, and each of them, and the City, each shall have the right, in each Party's sole discretion, to elect whether or not to defend such action. If defense is made, Property Owners and City each shall have the right to select its own counsel and to control its participation and conduct in the litigation in all respects permitted by law. If defense is made, Property Owners and City agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement, only so long as such joint defense and confidentiality agreement is in a form reasonably satisfactory to each respective party to that agreement, in order to share and protect information under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Property Owners shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Where Property Owners elect to defend an action, Property Owners agree to and shall pay all costs and expenses incurred by City to participate in such defense (or, at the sole option of City, Property Owners shall thereupon defend with counsel approved by City's City Attorney), including any awards of attorneys' fees, except in actions brought by Property Owners. Property Owners may terminate its defense at any time, in which case City also may terminate its defense.

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D. The City agrees to give prompt notice to Property Owners with respect to any suit or claim initiated or threatened against the City, and in no event, later than the earlier of (a) ten (10) days after valid service of process as to any filed suit, or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim, which the City has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Property Owners, then Property Owners' liability hereunder shall terminate to the extent and only to the extent that Property Owners are prejudiced by such failure as to the matter for which such notice is not timely given. It is understood and agreed that no commissioners, members, officers, agents, or employees of the City (or of its successors or assigns) shall be personally liable to Property Owners nor shall any officers, directors, shareholders, agents or employees of Property Owners (or of its successors or assigns) be personally liable to City in the event of any default or breach of this Agreement.

6.06 Notices

All notices to be given hereunder shall be in writing and shall be served, either personally or by mail, postage prepaid, to the Parties at the addresses set forth below, or to any other address provided by one (1) party to the others in writing.

CITY:

Director
Department of Planning,
Building & Code Enforcement
200 E. Santa Clara St.
San Jose, CA 95113
Attn: Joseph Horwedel

With a copy to:

City Attorney
Office of the City Attorney
200 E. Santa Clara St.
San Jose, CA 95113

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PROPERTY OWNERS: On behalf of all of the Property Owners,
[REDACTED] is hereby designated by the Property Owners to provide
copies of all notices hereunder to all of the Property Owners

ARCADIA DEVELOPMENT CO., a California corporation
1115 Coleman Avenue, San Jose CA 95150

ELI REINHARD, an individual
1115 Coleman Avenue, San Jose CA 95150

PEPPER-LANE-QUIMBY LLC, a California limited liability company

DUINO FAMILY PARTNERS LP, a California limited partnership

MISSION WEST PROPERTIES LP, a California limited partnership
10050 Bandley Drive, Cupertino, California 95014

IONE ENTERPRISES 2 LLC, a California limited liability company
10050 Bandley Drive, Cupertino, California 95014

PACIFIC RIM SCIENCE PARK LLC, a California limited liability company
515 S. Figueroa Street, Suite 1600, Los Angeles CA 90071

YERBA BUENA OPCO LLC, a California limited liability company
4000 S. 3rd Street, Suite 600, Foster City CA 94404

SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT, a political subdivision
of the State of California

6.07 California Law to Govern

It is understood and agreed by and between the Parties hereto that this Agreement shall be deemed and construed to be entered into and to be performed in the County of Santa Clara, State of California, and it is further understood and agreed by and between the Parties that the law of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties and also govern the interpretation of this Agreement.

6.08 Not a Development Agreement

The Parties agree that this Agreement shall not be considered or construed in any manner as a development agreement under Sections 65864 through 65869.5 of the Government Code and City Ordinance No. 24297.

6.09 Compliance with City Laws; Payment of Taxes and Fees

Each Property Owner shall comply with all City ordinances, resolutions, rules and regulations applicable to the development of each of their respective sites, including but not limited to obtaining required permits and approvals and payment of associated fees and costs. Each Property Owner shall also pay all taxes, fees, charges and other costs of development that are in effect at the time of application for each building permit.

6.10 Venue

In the even that suit shall be brought by any Party, the Parties agree that trial of such action shall be held in a State Court of the County of Santa Clara or in a U.S. District Court for the Northern District of California.

6.11 Prohibition Against Acceptance of Gifts

A. Property Owners are familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in the San Jose Municipal Code.

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B. Property Owners agree not to offer any City officer or designated employee any gift prohibited by the Municipal Code.

C. A Property Owner's offer or giving of any gift prohibited by the Municipal Code shall constitute a material breach of this Agreement by the Property Owner. In addition to any other remedies City may have in law or equity, City in its sole discretion may revise or rescind any of its land use approvals and/or terminate this Agreement.

D. Property Owners, and each of them, agree to include the above provisions in all of their contracts with consultants, subconsultants, subcontractors, and agents. Upon notification from City that a violation of the Gift Ordinance as defined in the Municipal Code has occurred, Property Owners agree to take reasonable steps, within Property Owner's control, to have the violation remedied.

6.12 Entire Agreement

This Agreement, together with the Project Approvals and the agreements referenced herein, contain the entire understanding between the Parties with respect to the subject matters herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed or referenced herein. This Agreement may not be amended except by written instrument signed by all the Parties.

6.13 Time

Time is of the essence for the performance of each and every term, covenant, and condition contained in this Agreement.

6.14 Effective Date

No part of this Agreement shall become effective as to any Party until the Effective Date.

6.15 No Third Party Beneficiary

The Parties hereto mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit on any third party. There is no third party beneficiary to this Agreement.

6.16 Counterparts

This Agreement may be executed in counterparts.

6.17 Development As a Private Undertaking

No partnership, joint venture or other association of any kind between any of the Property Owners and City is formed by this Agreement.

6.18 Further Assurances

Each Party shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered any and all acts, deeds, and assurances, including the delivery of any documents, as either Party may reasonably required to effectuate the intent and purpose of this Agreement.

6.19 Nonwaiver

Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

6.20 Construction

The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

6.21 Conflict Between Evergreen Development Policy and Agreement

In the event of a conflict in the provisions of the Evergreen Development Policy and any related land use determinations and the provisions of this Agreement, the Evergreen Development Policy and related land use determinations shall govern all land use related matters while the provisions of the Agreement shall govern all matters relating to the funding obligation hereunder.

6.22 Force Majeure

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In addition to specific provision of this Agreement, the time within which a Party is required to perform any act under this Agreement shall be extended by a period of time equal to the amount of time during which performance of act is delayed for reasons beyond the reasonable control of such party due to war; insurrection or acts of civil disobedience; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; the pendency of any mediation, arbitration, litigation or other administrative or judicial proceeding affecting the construction and completion of the Improvements and Amenities, or a Party's ability to perform its obligations under this Agreement; unusually severe weather; inability to secure necessary labor, materials, or tools; delay of any contractor, subcontractor, or supplier; acts of another party; acts or the failure to act by Parties shall not excuse performance by Parties; or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform which substantially interferes with such Party's performance under this Agreement (collectively, "Force Majeure Events"). An extension of time for any cause shall only be for the period of the Force Majeure Event, which period shall commence to run from the time of commencement of the Force Majeure Event. A Party claiming an extension due to a Force Majeure Event shall notify all other Parties in writing within thirty (30) days after commencement of the Force Majeure Event. If, however, notice by the Party claiming extension is sent to the other Party more than thirty (30) days after the commencement of the Force Majeure Event, then unless otherwise agreed by the Parties in writing, the period shall commence to run only thirty (3) days prior to giving such notice.

6.23 Captions

The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

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6.24 Corporate Authority.

The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

WITNESS THE EXECUTION HEREOF the day and year hereinabove written.

CITY:

**CITY OF SAN JOSE,
a municipal corporation**

Approved as to Form

LES WHITE
City Manager

VERA M. I. TODOROV
Senior Deputy City Attorney

PROPERTY OWNERS:

ARCADIA DEVELOPMENT CO, a California corporation

By:
Its:

By:
Its:

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ELI REINHARD, an individual

PEPPER-LANE-QUIMBY LLC, a California limited liability company

By:

Its:

By:

Its:

DUINO FAMILY PARTNERS LP, a California limited partnership

By:

Its:

By:

Its:

MISSION WEST PROPERTIES LP, a California limited partnership

By:

Its:

By:

Its:

**IONE ENTERPRISES 2 LLC,
a California limited liability company**

By:

Its:

By:

Its:

**PACIFIC RIM SCIENCE PARK LLC,
a California limited liability company**

By:

Its:

By:

Its:

**YERBA BUENA OPCO LLC,
a California limited liability company**

By:

Its:

By:

Its:

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SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT, a political subdivision of the State of California

By:

Its:

By:

Its:

*All Property Owner signatures must be notarized and proof of authority to execute on behalf of each property owner entity is required.

Attachments:

- Exhibit "A" - Evergreen Development Policy Area and Opportunity Sites
- Exhibit "B" - List of Property Owners with Assessor Parcel Numbers
- Exhibit "C" - Amenities List
- Exhibit "D" – Phasing and Funding Plan

WORKING DRAFT

**FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND
AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA**

EXHIBIT “A”

Location Map to be inserted

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FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA

EXHIBIT "B"

<u>Site</u> <u>(by Common</u> <u>Name)</u>	<u>Assessor</u> <u>Parcel</u> <u>Number</u> <u>(APN)</u> <u>(Subject to</u> <u>verification)</u>	<u>Number of</u> <u>Proposed</u> <u>Residential</u> <u>Units</u> <u>By Site</u>	<u>Property Owner</u> <u>by APN</u>
Campus Industrial Site (Berg)	659-02-010 660-33-001 660-33-002 660-33-006 660-33-013 660-33-011 660-33-025 660-33-026 660-33-014 660-33-012 660-33-020	660	Mission West Properties LP lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC lone Enterprises 2 LLC
Campus Industrial Site (IDS)	660-33-027 660-33-028	130	Pacific Rim Science Park LLC Pacific Rim Science Park LLC
Campus Industrial Site (Legacy)	660-19-005 660-19-011 660-19-012 660-19-020 660-19-021	400	Yerba Buena OPCO LLC Yerba Buena OPCO LLC Yerba Buena OPCO LLC Yerba Buena OPCO LLC Yerba Buena OPCO LLC
Evergreen Valley College Site	660-21-022 660-21-023	500	San Jose/Evergreen Community College District San Jose/Evergreen Community College District
Arcadia Site	670-20-071 670-24-013 670-24-045 670-25-027 670-29-002 670-29-017 670-29-020	1875	Eli Reinhardt Pepper-Lane-Quimby LLC Arcadia Development Company, Arcadia Development Company, Arcadia Development Company, Arcadia Development Company, Arcadia Development Company,
Pleasant Hills Golf Course Site	649-23-001 649-24-013	665	Duino Family Partners LP Duino Family Partners LP

**FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND
AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA**

EXHIBIT “C”

Amenities List

Tier 1:

1. Youth Sports Fields – Little League (Campus Industrial)
2. Community Center on Arcadia
3. Thompson Creek Trail
4. Fowler Creek Phase II & III
5. Mount Pleasant Multi-use, Community Center, Sports Fields

Tier 2:

6. Trails, Bike Lanes, and Minor Traffic Calming
 - i. Upper Silver Creek Trail
 - ii. Fowler Creek Trail
 - iii. Bike lanes for appropriate corridors
 - iv. Minor Traffic Calming
7. Sports Fields and New Neighborhood Park (Campus Industrial)
8. Sports Fields (Arcadia airport approach zone)
9. Sports Fields at August Boeger Jr. High/Fernish Park
10. Aquatic Center

Tier 3:

11. Ocala Softball Fields
12. Intelligent Transportation System ITS
13. Lake Cunningham Improvements
14. Sports Fields (PHGC)
15. New traffic signals and other transportation investments

Tier 4:

16. Street trees
17. Nieman overcrossing
18. Lake Cunningham Overcrossing
19. Median Island Landscaping
20. Neighborhood Park Improvements (Meadowfair Park)

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**FUNDING AGREEMENT FOR CERTAIN IMPROVEMENTS AND
AMENITIES IN THE EVERGREEN DEVELOPMENT POLICY AREA**

EXHIBIT “D”

PHASING AND FUNDING PLAN

To Be Inserted